IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5531 OF 1997

1. Shri Bandu Dhondi Jamdar,
   age about 60 years,
   Occ: Agriculturist,
   residing at Parale, Post
   Taluka & Taluka Shahuwadi,
   District: Kolhapur.
2. Shri Pandurang Dhondi Jamdar,
   age 70 years, Occ: Agri.,
   resident of as above.
3. Shri Namdeo Dhondi Jamdar,
   age 55 years, Occ: Agri.
   resident of as above.
4. Shri Shamrao Dhondi Jamdar,
   age 50 years, Occ: Agri.
   resident of as above. .... Petitioners

- Versus -

1. Special Land Acquisition
   Officer No.12, Kolhapur.
2. Collector and Deputy
   Director of Resettlement,
   Kolhapur.
3. Additional Commissioner,
   Pune Division, Pune.

4. The State of Maharashtra .... Respondents

Sarvasri I.M. Khairdi i/b V.B. Naik for
the Petitioners.
Ms S.S. Bhende, Asst. Government Pleader,
for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
V.M. KANADE, JJ.

DATED: SEPTEMBER 14, 2005

ORAL JUDGMENT (Per V.M.Kanade, J.):

1. The petitioners are challenging the acquisition proceedings initiated by respondent No.1 under the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1986, hereinafter referred to as "the Rehabilitation Act of 1986" r/w the provisions of the Land Acquisition Act, 1894, hereinafter referred to as "the said Act". The only grievance made on behalf of the petitioners is that the Special Land Acquisition Officer has not taken into consideration a vital and important fact that the land of the petitioners was partitioned by and a decree to that effect was passed by the Civil Court in Regular Civil Suit No.70 of 1988. They submitted that by virtue of the said partition, the individual holding of each of the petitioners is less than 1 hectare and 61 ares, as provided in Part II,

Schedule I of the Rehabilitation Act of 1986. It is, therefore, submitted that the entire acquisition proceedings are liable to be quashed and set aside.

2. The learned A.G.P. appearing on behalf of the respondents has submitted that the Notification under Section 11 of the said Act was issued on 27-1-1981 and a as a result of the said Notification, there was a bar on transfer, partition, sale by sale deed or through decree of the Civil Court and, therefore, she submitted that the petition is liable to be dismissed.

3. In our view, the contention raised by the petitioners cannot be accepted on account of the Notification having been issued by the Government under Section 11 of the Maharashtra Resettlement of Project Displaced Persons Act of 1976, hereinafter referred to as "the Resettlement Act of 1976" in January, 1981 as a result of which there was restriction on transfer, sub-division, partition or conversion of land under Section 12 of the said Act. Section 12 even puts a restriction on partition by a decree or order of any Court or other competent authority. The decree, therefore, passed in the said suit filed by the petitioners in 1988 cannot be of any assistance to the petitioners as it is passed after the issuance of the Notification under Section 11. It is an admitted position that the Resettlement Act of 1976 was repealed

and in its place the Rehabilitation Act of 1986 was brought into force. By virtue of the savings clause the action taken under the Resettlement Act of 1976 was saved. The Notification under Section 11 of the Resettlement Act of 1976 therefore is saved.It must be noted here that the fact of issuance of the Notification by the Government under Section 11 of the Resettlement Act of 1976 has been suppressed by the petitioners in this petition and it was the duty of the petitioners to bring this fact to the knowledge of the Court and make suitable averment in the petition. However, on account of suppression of the said fact, the petition was admitted and the interim relief was granted.

4. In the result, there is no merit in the contentions raised by the petitioners and the writ petition is dismissed with costs. The rule is discharged. Interim relief stands vacated.

(V.M. Kanade, J.) **(R.M.S. Khandeparkar, J.)**